

**UNITED STATES DEPARTMENT OF THE INTERIOR
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November 8, 2012

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Instruction Memorandum No. CO-2013-009
Expires: 09/30/2014

To: Deputy State Directors, District Managers and Field Managers

From: State Director

Subject: Clarification of National Environmental Policy Act (NEPA) Third-Party Contracting Memorandums of Understanding (MOUs)

Program Area: Planning and Environmental Coordination, Resource Programs, Lands and Realty, and Minerals.

Purpose: The purpose of this Instruction Memorandum (IM) is to provide guidance on the role of MOUs for NEPA documents prepared by third-party contractors, and to provide Bureau of Land Management (BLM) Colorado MOU templates for NEPA purposes.

Policy/Action: The use of third-party contracts to facilitate processing of proposals and applications through BLM NEPA processes is provided for in 40 CFR 1506.5, with clarification by the Council on Environmental Quality (CEQ) in the “40 Most Asked Questions Concerning CEQ’s NEPA Regulations.” Agency policy and direction are found in BLM Handbook 1790-1 in section 13.5.

When a NEPA MOU should be used

An MOU is required when a third-party contractor will be used to prepare an Environmental Impact Statement (EIS). A third-party contractor is the entity preparing the NEPA document through contract with the project proponent. It is also recommended that an MOU be developed for a major or controversial Environmental Assessment (EA).

Please use the following criteria to determine if an EA is major or controversial and would require an MOU:

- It is a borderline case for preparation of an EIS (e.g., when significant effects can only be avoided through mitigation);
- It has a known risk of litigation;
- It is an unusual case, a new kind of action, or is precedent setting;
- Its effects reflect a level of public or scientific controversy.

If an EA does not meet any of the above criteria, an MOU is not required. The development of MOUs are discouraged for EAs that don't meet these criteria. For smaller and less complex EA actions, the development of an MOU may impose unnecessary and burdensome time constraints. This does not imply that a third-party contractor cannot be used for the project. Regulations at 40 CFR 1506.5(b) and (c) allow an applicant to be responsible for preparing an EA, but require the agency to make its own evaluation of the environmental issues and take responsibility for the scope and content of the EA. The applicant can develop the EA on their own or with assistance from a consultant/contractor.

The purpose of a NEPA MOU

An MOU for a NEPA document prepared by a third-party contractor establishes the roles and responsibilities of the BLM and the project proponent(s) in the NEPA process, and specifies that all costs of using a contractor to prepare the NEPA document will be borne by the proponent. An MOU defines the roles of the BLM and the proponent(s) with respect to communications with the third-party contractor. All MOUs must require that the third-party contractor submit the disclosure statement that specifies that the contractor has no financial or other interest in the outcome of the project (40 CFR 506.5(c)(3)).

If a project requires an EIS, the MOU should be more detailed, and may be subject to Solicitor review (if appropriate as determined by the field manager, district manager and Colorado State Office Planning and Environmental Coordinator). When it is appropriate to prepare an MOU for an EA, it should be focused on the basic roles and responsibilities and does not require Solicitor review.

BLM Colorado NEPA MOU templates

The BLM Colorado State Office has provided NEPA MOU templates to be used by all field offices when an MOU is necessary for the preparation of an EIS or EA in Attachments 1 and 2, respectively. The purpose of these templates is to provide consistency across BLM Colorado, both internally and for project proponents that work with multiple field offices.

The NEPA MOU templates can be added to as needed on a project-specific basis as determined by the district and/or field manager. Any changes should be reviewed by a Colorado State Office planning and environmental coordinator.

According to the 1203 Colorado manual, MOUs should only be signed by a field manager, district manager, the Associate State Director or the State Director. All MOU's should be

assigned an MOU number by the MOU Coordinator (records manager), and an original signed copy maintained in official MOU records.

Timeframe: This IM is effective upon receipt.

Budget Impact: None.

Background: This IM is in response to requests from field offices and project proponents for BLM Colorado guidance on MOUs for NEPA documents prepared by third-party contractors, and the need for statewide NEPA MOU templates.

Directives Affected: A BLM Colorado handbook supplement will incorporate the new policy and guidelines.

Coordination: This IM was coordinated with the Deputy State Director, Resources and Fire Management (CO-930), the Branch of Planning and Assessment (CO-933), and all field and district managers.

Contact: If there are any questions regarding this IM, please contact Christina Reed, Planning and Environmental Coordinator, at (303) 239-3677; Michael Hildner, Planning and Environmental Coordinator, at (303) 239-3709; or Megan Stouffer, Branch Chief, Branch of Planning and Assessment, at (303) 239-3936.

Signed by:
Helen M. Hankins
State Director

Authenticated by:
Carl P. Guerette
Branch of IRM & Access

2 Attachments:

- 1 – EIS MOU Template (15 pp)
- 2 – EA MOU Template (8 pp)